

Hayward et al., WO 00/32616 (hereinafter "WO 00/32616").

Applicants respectfully disagree with this ground of rejection. As shown in the enclosed Declaration and the comparative testing data, Applicants have unexpectedly discovered that compounds of formula 1 possess superior antibacterial activities in the presence of 50% human serum when "each  $R^3$  is independently selected from  $C_6-C_{10}$  aryl or 5-10 membered heteroaromatic, and the heteroaromatic and aryl moieties of the foregoing  $R^3$  groups are substituted by a  $-CHR^9NR^{11}R^{12}$  group and optionally substituted by 1 to 4  $R^4$  groups." Specifically, the inhibitory activity to Stau1095 (*S. aureus* 1095) by compound CP-733798, which is claimed in the present application, is eight times more resistant to the presence of 50% human serum than compound CP-628295, a compound disclosed in WO 00/32616. Other examples also show the superior inhibitory activities of the claimed compounds to Stau1095 in the presence of 50% human serum compared with those of the WO 00/32616 compounds.

As "superiority of a property shared with the prior art is evidence of nonobviousness," under M.P.E.P. § 716.02 (a), Applicants respectfully submit that claims 1-8 are nonobvious over the disclosure of WO 00/32616. Accordingly, reconsideration and withdrawal of this ground of rejection are respectfully requested.

#### DOUBLE PATENTING REJECTION

Claims 1-8 remain rejected under the judicially created doctrine of obviousness-type double patenting for the same reason given in the above 103 rejection.

As stated in Applicants' response to the obviousness rejection and in the enclosed Declaration and comparative testing data, the claimed compounds possess unexpectedly superior properties over those in claims 1-8 and 13-16 of the '745 patent. Therefore, claims 1-8 are nonobvious over claims 1-8 and 13-16 of the '745 patent because "superiority of a property shared with the prior art is evidence of nonobviousness," M.P.E.P. § 716.02 (a). Accordingly, reconsideration and withdrawal of this ground of rejection are respectfully requested.

CONCLUSION

In view of the foregoing, further and favorable consideration of the present application and the issuance of a Notice of Allowance are respectfully requested.

It is believed that no fee is required for the consideration of this Response. However, if any fees are required, the examiner is authorized to charge such fees to our Deposit Account No. 16-1445.

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